

SELLAMUTHU v. KARAI NAGAR ESTATE

[O.C.J. (Yusof Abdul Rashid J.) November 15, 1980]

[Johore Bahru — Civil Suit No. 240 of 1967]

Labour Law — Termination of services of mandore — One month's notice given — Application for declaration that dismissal void — Employment Ordinance, 1955, ss. 11, 12, 13 and 14.

In this case the plaintiff had been employed as a mandore in an estate and he was given one month's notice terminating his services. He applied for a declaration that his dismissal from employment was void and he claimed damages for the said wrongful dismissal.

Held: the defendants were entitled to terminate the services of the plaintiff by giving one month's notice and the application for the declaration must be dismissed.

Cases referred to:-

- (1) *S.R. Fox v. Ek Liong Hin Ltd.* [1957] M.L.J. 1.
- (2) *Mc Clelland v. Northern Ireland General Health Services Board* [1957] 2 All E.R. 129.
- (3) *Salt v. Power Plant Company Ltd.* [1936] 3 All E.R. 322.
- (4) *Jupiter General Insurance Co. Ltd. v. Ardeshir Bomanji Shroff* [1937] 3 All E.R. 67.
- (5) *D'Cruz v. Seafeld Amalgamated Rubber Co. Ltd.* [1963] M.L.J. 154.

CIVIL SUIT.

Elyas Majeed for the plaintiff.

U. Masacorale for the defendants.

Cur. Adv. Vult.

Yusof Abdul Rashid J.: The plaintiff sought a declaration that his dismissal from the employment of the defendants was void and claimed damages for the said wrongful dismissal.

The plaintiff was in the employment of the defendants since 1947 first as a rubber tapper and then in 1949 as a mandor. On April 30, 1967 he was served with a notice terminating his services with the defendants with effect from May 31, 1967. For the month of April 1967, he was paid his wages. It was admitted that the plaintiff was served with a month's notice terminating his services but it was contended that a month's notice was inadequate in view of the length of service rendered. The defendants on the other hand pleaded protection under the Employment Ordinance, 1955. It was common ground that there was no written contract of service and that there was no agreement as to the length of the period of notice.

The plaintiff alleged that his employment with the defendants was for life, that he was dismissed from service without any apparent reason, and that the one month's notice purporting to terminate his services was bad in law and ineffective. In support, the learned counsel for the plaintiff cited the cases of *S.R. Fox v. Ek Liong Hin Ltd.*,⁽¹⁾ *McClelland v. Northern Ireland General Health Services Board*,⁽²⁾ *Salt v. Power Plant Company Ltd.*⁽³⁾ and *Jupiter General Insurance Co. Ltd. v. Ardeshir Bomanji Shroff*.⁽⁴⁾ With due respect to the learned counsel, the court found that none of the cases cited had any bearing on the instant case under consideration.

The court was of the view that in the absence of any express contract of service to the contrary and any stipulation as to notice terminating the services

A of an employee, the provisions of the Employment Ordinance, 1955 shall apply and have effect in protecting the interests of both the employee and the employer. It was clear that the plaintiff was a "labourer" for the purposes of the Ordinance, being a person in the category set out under the First Schedule to the Ordinance. Before being amended by Act A360 of 1976, the provisions of section 6 of the Ordinance in force at the material time were:

B "6. Every agreement lawfully entered into between an employee and a labourer...under which one of the parties thereto has agreed to work for the other party and which was entered into before the date of commencement of this Ordinance...shall if it is still legally binding upon the parties at such date continue in force thereafter for such period as may be specified in such agreement and, subject to any express condition contained in such agreement, the parties thereto shall be subject to, and shall be entitled to the benefit of, the provisions of this Ordinance." [emphasis added].

C There was no dispute at all that the oral contract of service was in force when the Ordinance came into force and continued in force until terminated by the defendants on May 31, 1967. In the absence of any express condition, both the plaintiff and defendants were subject to and shall be entitled to the benefits of the provisions of the Ordinance.

D The provisions of the Ordinance had to be examined to determine what, at the material time, benefits were conferred by the Ordinance on and what protections were accorded to both parties. The issues might be summarised as those relating to the termination or dismissal of service and those relating to notice regarding such matter.

E It was the contention of the plaintiff that since his services were required by the defendants for an unspecified period, his service was in fact for life. However, section 11(2) of the Ordinance provides:

F "(2) A contract of service for an unspecified period of time shall continue in force until terminated in accordance with the provisions of this Part."

and the termination of service of a labourer might take the form of serving a notice of dismissal. Before 1969, the provisions of section 12 were in the following terms:

G "(1) Either party to a contract of service may give to the other party notice of his intention to terminate such contract and, subject to the provisions of sections 13, 14 and 15, sub-section (2) of section 16 and section 17 of this Ordinance, such contract shall terminate upon the expiry of such period of time (in this Part called "the period of notice") from the giving of such notice as is provided in sub-section (3) of this section.

H (2) Notice under sub-section (1) of this section may be given either orally or in writing at any time, and the day on which the notice is given shall be included in the period of notice.

(3) The period of notice shall be —

- (a) the period (if any) specified in the contract of service, being a period not exceeding one month; or
- (b) where no period is specified in the contract of service or where the period so specified exceeds one month, a period of one month:

I Provided that where an agreement providing for a giving of a longer period of notice has been negotiated between an employee or a registered trade union of employers and a registered trade union of employees the Industrial Court established under the Industrial Courts Ordinance, 1948 may, on reference being made to it by the Minister, authorize any employer and any of his labourers to whom such negotiated agreement applies to fix by mutual agreement a period of notice not exceeding the period so negotiated or a period

not exceeding six months, whichever is the less, in respect of any contracts of service existing between them."

In the circumstances, the contention that the service was for life could not be sustained as no such benefit was conferred on the plaintiff by the Ordinance. On the other hand, the defendants were allowed by the Ordinance to terminate the contract of service of the plaintiff. To so terminate the services of the plaintiff, the defendants were required to serve a month's notice under section 12 and to this requirement the defendants had complied. Had the defendants failed to serve a one month's notice to terminate the services of the plaintiff then the defendants would be liable for damages determined under section 13 for breach of contract. At the material time, section 13 of the Ordinance provided—

"(1) Either party to a contract of service may terminate such contract without notice, or, if notice has already been given in accordance with section 12, of this Ordinance, without waiting for the expiry of the period of notice—

(a) on paying to the other party an indemnity equal to the amount of wages which would otherwise have been earned by the labourer during such period of notice as might have been given under section 12 or during the period of time from the date of such termination of the contract to the expiry of the period of notice, as the case may be; or

(b) in the event of any wilful breach by the other party or any condition in the contract or any provision of this Ordinance applicable to such contract of service.

(2) Unless the contract of service otherwise provides, the party who breaks a contract of service shall be liable to pay to the other party a sum equal to the amount he would have been liable to pay under the provisions of paragraph (a) of sub-section (1) of this section if he had terminated such contract without notice."

Thus, even if the defendants had committed a breach of contract, which the court found otherwise, the damages which might be awarded would be one month's wages.

The plaintiff alleged that the defendants could not terminate the services of the plaintiff without valid reason or if founded on *mala fide*. In this respect the court would content itself by quoting what Gill J. (as he then was) said in the case of *D'Cruz v. Seafield Amalgamated Rubber Co. Ltd.*⁽⁵⁾—

"...I now come to the last question to be decided in these proceedings, namely, the question as to the length of notice for terminating a contract of service. I would preface that the basis of the employer and employee relationship in almost all cases is contractual, so that the general principles of the law of contract apply to a contract of service. It is therefore clear that the right of the private employer to dismiss his servant is only limited by the terms of the contract. Thus, where a contract provides for the services of an employee to be terminated on a month's notice, the employer can dismiss the servant by giving him a month's notice without stating any reason for doing so, without having any reason for doing so or indeed for the most disreputable and wicked reasons...."

The plaintiff, further contended that he was wrongfully dismissed. Now, provisions regarding dismissal in the Employment Ordinance, 1955, were, at the material time, provided for under section 14, the provisions of which were—

"(1) An employer may terminate the contract of service of a labourer without notice on grounds of such labourer's misconduct."

The court was of the opinion that had the defendants failed to serve a one month's notice on the plaintiff when the latter's contract of service was terminated,

A then it was a dismissal and that the defendants had no right to dismiss the plaintiff unless they could establish misconduct on the part of the plaintiff. However, since one month's notice was served, section 14(1) did not apply and the termination of service was not a dismissal.

B Taking all the evidence in its totality, the court found that the plaintiff had failed to establish that he was entitled to the declaration sought for and the suit was dismissed with costs.

Suit dismissed.

Solicitors: *Elyas Majeed & Co.; Jackson & Masacorale.*

C

RATHEE v. SHANMUGAM

[O.C.J. (Wan Suleiman F.J.) January 15, 1981]

[Ipoh — Petition for Divorce No. 42 of 1979]

Family Law — Petition for divorce — Nullity — Wilful refusal to consummate marriage — Refusal to proceed with marriage according to religious rites — Marriage at Registry of Marriage — Mutual agreement by parties that cohabitation was to commence only after the celebration of marriage according to the rites of the Hindu religion — Refusal by respondent to arrange ceremony — Refusal constituting wilful refusal to consummate.

D

Hindu Customary Law — Couple married at Registry — Refusal of respondent to proceed with marriage according to religious rites — Wilful non-consummation — Marriage null and void.

E

The parties who were Hindus married at the Registry of Marriage, Ipoh on November 6, 1976. It was agreed by the parties that cohabitation was to commence only after the celebration of the marriage according to the rites of the Hindu religion and that was to come about two months after the civil marriage. After unsuccessful attempts by the parents of the respondent and petitioner's father to persuade the former to proceed with the marriage according to religious rites, respondent's parents and petitioner's father arranged for that ceremony to be held on June 6, 1979, apparently without previously ascertaining whether respondent would fall in with their arrangements. On or about June 3, 1979 the respondent returned to Ipoh and the following day insisted that his parents called off the religious ceremony. A few days later he personally told the petitioner that he had no intention of proceeding with the religious ceremony. He also told her that he would have nothing more to do with her.

F

G Held: the failure by respondent in this case to proceed with the ceremony according to Hindu rites would entitle petitioner to refuse to consummate, and entitle her instead to a declaration that the marriage was null and void for wilful refusal to consummate by respondent.

Cases referred to:-

(1) *Kaur v. Singh* [1972] 1 All E.R. 292.

(2) *Jodla v. Jodla* [1960] 1 All E.R. 625.

H

(3) *Tan Siew Choon v. Tan Kai Ho* [1973] 2 M.L.J. 9.

PETITION FOR DIVORCE.

U. Harcharan Singh for the petitioner.

Respondent not appearing.

Cur. Adv. Vult.

I

Wan Suleiman F.J.: This is a petition by Rathee d/o Muthu under section 14 of the Divorce Act, 1952 for a declaration that her marriage to the respondent Shanmugam s/o Munusamy be declared null and void. The petition was uncontested.

The parties, according to the petitioner had undergone a ceremony of marriage at the Civil Registry of Marriages, Ipoh on November 6, 1976. It had been previously agreed by the parties that cohabitation was